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Chair

Mr. Gordon Brown

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● (1105)

[*English*]

The Chair (Mr. Gordon Brown (Leeds—Grenville, CPC)): Good morning, everyone.

We're going to call this ninth meeting of the special Legislative Committee on Bill C-32 to order.

I'd like to wish everyone a happy new year, now that we're back in action, moving this bill through the legislative process.

As part of that, we now have a new clerk, so I'd like to introduce to the committee our new clerk, Andrew Chaplin. Welcome, Andrew.

For the first hour we have a number of witnesses. We have Alain Pineau from the Canadian Conference of the Arts. We have Bill Freeman from the Creators' Copyright Coalition, as well as Marvin Dolgay, president of the Screen Composers Guild of Canada.

We will have five minutes from each of our witnesses and then we'll start the questions around the table.

Mr. Pineau....

Mr. Bill Freeman (Chair, Creators' Copyright Coalition): Thank you very much.

The Chair: My list says Mr. Pineau is first, but if the witnesses want to negotiate among themselves, they can.

Mr. Bill Freeman: No, it doesn't matter. You go first.

The Chair: All right.

Mr. Pineau.

Mr. Alain Pineau (National Director, Canadian Conference of the Arts): Thank you very much, Mr. Chairman.

Before we start the clock, I have a request to make. I have given a document to the clerk that I would like to have put on the record as read, as if it had been read in full, because it's a bit too long for the purpose here. And I have cut down on the document that has been circulated. I will just indicate where I jump from one paragraph to another to facilitate, if that's okay.

The Chair: Okay. Thank you.

Mr. Alain Pineau: Thank you.

My name Alain Pineau and I'm the national director of the Canadian Conference of the Arts.

I will jump immediately to the second paragraph.

When it comes to copyright, we at the CCA have members who are rights holders and members who are rights users. So we are quite sensitive to the position you may find yourselves in as lawmakers when it comes to this prickly pear.

[*Translation*]

It is from the broad and unique perspective of the Canadian Conference of the Arts that I come here to comment on Bill C-32. I will concentrate on the big picture and let our member organizations propose specific amendments to ensure the Copyright Act really works for the benefit of the Canadian creative economy, of Canadian consumers and, obviously, of our artists and creators who should be at the centre of our preoccupations.

Copyright is a key piece of any national digital strategy and should be one of the cornerstones on which Canada defines its place in the global knowledge economy. Failure to amend the legislation and salvage C-32's more positive provisions could severely compromise Canada’s cultural and economic performance.

I am going to skip the next two paragraphs.

[*English*]

Let me start with the positive.

First, we all agree that it is high time that Canada update its Copyright Act, and we thank the government for attempting once again to bring this important piece of legislation up to date and in line with our international obligations. We share the urgency, but not at any cost.

Second, it is clear that Bill C-32 satisfies a number of people, particularly in the corporate world and the entertainment, software, recording, and cinematographic industries. Our members rejoice that those components of the cultural sector are satisfied with the bill, so I am not here to dispute the lists of happy campers, which Mr. Del Mastro has quoted often, both in the House and here, but I will point to the still longer list of people for whom Bill C-32, as it now stands, is hurtful.

Third, on the positive side, Bill C-32 contains elements that are viewed as positive by artists, creators, and cultural workers in general. I refer here to the distribution right, the reproduction and moral rights for performers, the length of protection of sound recordings, and the rights to photographers.

Let me now move to the negative aspects of Bill C-32. The bill's main flaw is that it fails to recognize the existence of at least two very different kinds of markets. The bill proposes a one-size-fits-all approach, which clearly satisfies the big players and all international company interests but which is far less important to the majority of Canadian artists.

The proponents of the bill argue that it gives artists and creators the tools necessary to protect and monetize their work and develop new markets: they simply have to put digital locks on their works and resort to the justice system to have their rights respected. Locks trump exceptions, which has Professor Geist up in arms and does not satisfy the education community either.

But since locks are not an option for most artists and individual content creators, the bill is rightly perceived by them as a de facto expropriation of their property rights without compensation.

The lock-litigation approach is disconnected from the realities of life of most Canadian artists and creators. The world of most Canadian artists is not that of Ubisoft or that of CRIA. Forty-two per cent of Canadian artists are self-employed. They don't have the resources to monitor Internet and wireless users to see if they are infringing their property rights. Because they are busy creating their art and developing new business models that seize upon the opportunities of direct access to their audiences, they don't have the time or financial resources to launch complicated court cases against those who illegally copy their work, whether for commercial or non-commercial use.

● (1110)

[*Translation*]

The unprecedented YouTube exception and the broad fair dealing purposes included in C-32 turn current copyright law on its head by signalling to users that they can infringe copyright as much as they want until someone sues them for damages. Even these are limited by the bill in such a way as to favour intentional infringement. To have their rights respected, the creator, publisher or producer must demonstrate that the market for their works has been significantly damaged, a notoriously difficult burden of proof.

The challenges they may face are perfectly illustrated by the case of Claude Robinson, who has been in litigation for the past 15 years to defend rights, which this bill will jeopardize further if not amended.

[*English*]

For those of you who are not familiar with Claude Robinson's case, I've added a summary at the end of this presentation, which of course I will not read.

The precarious situation of self-employed artists was recognized by a previous Conservative government when it adopted the Status of the Artist Act in 1992. This act created the possibility for individual artists and self-employed creators to be represented by collectives.

In order to facilitate access to their works and ensure proper compensation, over the past 20 years artists have established a number of organizations responsible for collecting and distributing royalties to artists and for defending their interests in front of regulatory bodies and tribunals. Collective societies provide consumers with easy access to copyright-protected content and rights holders with efficient management for many uses of their works, replacing numerous uneconomic, low-value transactions between creators and consumers, for their mutual benefit.

One of the core problems—

The Chair: Mr. Pineau, you're going well over time now, so could you wrap up quickly, please?

Mr. Alain Pineau: Yes, I will do that.

I'll just point out that the current bill erases $126 million in current revenue for artists with all the exceptions, and that's a major blow to those people.

[*Translation*]

This bill fails to provide a clear, predictable framework for the rights of creators and for the users of these rights. As the Quebec Bar Association has aptly pointed out, the long list of new, expanded and often ill-defined exceptions will create uncertainty in the market-place.

[*English*]

There is at the end of this presentation something you can ask me questions about. It is the list of the main areas to amend in Bill C-32.

Thank you very much.

The Chair: Thank you very much, Mr. Pineau.

We'll move on to Mr. Freeman.

Mr. Bill Freeman: Thank you very much.

Marvin Dolgay and I are representing the Creators' Copyright Coalition. Mr. Dolgay is a musician and composer and the president of the Screen Composers Guild of Canada. He's one of Canada's leading composers of music for film and television. He's also the vice-chair of the CCC.

I'm Bill Freeman. I'm a former chair of The Writers' Union of Canada, and I'm the chair of the Creators' Copyright Coalition. I write books for children, adult non-fiction, plays, and documentary film scripts.

We're here representing the CCC, an organization of 17 of the major creative groups, which represent about 100,000 creators.

I understand that you have received our broader brief. I'm not going to go into that in detail. I'm just going to make some additional comments.

When Canadians think of creators, they usually think of the rich and famous, but Marvin and I are much more typical. Like small business people, we earn our living from different sources. We do a little better than most, but surveys show that incomes of creators are low, somewhere between $15,000 and $20,000 per annum, from their creative works. Many have alternate jobs. That's how they support themselves and their families.

Creators believe that copyright legislation should be designed to encourage creation. Writers, musicians, visual artists, actors, and other creators are on the very cusp of the digital revolution, and that revolution should stimulate a flurry of new creations. But if exceptions are created in the Copyright Act so that there's no protection for their work, it could become a dead zone for professional creators, because they cannot earn a living from the material distributed on the Internet. At the moment, we fear that Bill C-32 will create that dead zone.

Let me make three general points about Bill C-32. First, every creator we know about wants his or her works to be widely distributed. We don't want it locked up. That's why they've gone to such effort, after all, and the pain, to create their works. But they do want to be paid for what they do. The principle guiding the act should be payment for use. It's as simple as that. Bill C-32 goes in the opposite direction in some cases by making a host of new exceptions, and those exceptions will be damaging to many creators.

Second, Bill C-32, frankly, is filled with confusion. We've been told by lawyers that it's overly broad and unclear in many places and will lead to complicated litigation that will cost millions of dollars and will take years to resolve. That's probably the worst thing you can do, because creators will have to pay for their share of that litigation. All that will happen is that you'll enrich the lawyers, and it'll come out of our pocketbooks.

Third, the Internet has changed the business model for almost every creator. The secondary use of material—that is, the chapter of a novel excerpted in a public school or the song on the radio or the audiovisual clip—is increasingly how works are being distributed today. There's nothing wrong with that. It's collective societies, though, who manage those secondary rights for creators, and the legislation, we feel, should strengthen the collective society. Bill C-32, in many instances, does just the opposite. It weakens SOCAN, certainly Access Copyright, and all the other collective societies that manage rights.

I'm going to ask Marvin to make some comments on the impact of Bill C-32.

● (1115)

Mr. Marvin Dolgay (Vice-Chair, President of Screen Composers Guild of Canada, Creators' Copyright Coalition): Thank you, Bill, and good morning to everybody.

I earn my living solely as a creator. I'm a musician and a screen composer. Like the vast majority of my colleagues, I'm not a big star, I'm not a household name, I have no T-shirts to sell, nobody pays big ticket prices to see me, and there are no product endorsements in my future.

In actuality, we make our primary living from secondary income streams. I'm a member of SOCAN, SODRAC, CFM, and ACTRA. These collectives efficiently distribute the revenues collected from our rights to us. Be aware that even with all these revenue streams, none of these income sources provide a decent living on their own. We rely on the strength of our combined collectives.

Bill C-32, as written, is meant to modernize consumers' access and use of copyright-protected works. Let me be clear: we want the consumer to consume our works. That is how a successful business model works. However, our ability to make a living could be stripped away with Bill C-32's pages of exceptions, while others are making money from our content.

YouTube generates money from content, but the bill creates an exception so we do not get paid. Broadcasters generate money from content, but the bill creates an exception, so we lose our income from broadcast mechanicals. Digital recording devices generate money from the very existence and essence of our content, but the bill creates an exception that effectively eliminates our private copying royalty income. Again, we do not get paid. Educators value and use our content in the classroom, but, again, we do not get paid. This is not balance.

What my colleagues and I need is simple. We need to be treated like any other legitimate business sector that creates a product of value. We want our end users to have access to our work and we need to be paid accordingly for its consumption. I'm not a lawyer, a lobbyist, a politician, or a bureaucrat. I'm not an educator, a broadcast or ISP executive or employee, but if I were, there would be no question that I would be paid for my work.

We are very small businesses, and in order to survive we must be allowed to have the tools to receive payment for the success of our inventory.

Mr. Freeman and I look forward to answering any of your questions. Thank you very much.

● (1120)

The Chair: Thank you to our witnesses.

We'll now move to the first round of questioning. It will be for seven minutes. We'll now call upon Mr. Rodriguez.

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Thank you, Chair.

[*Translation*]

Good morning to all the witnesses. Thank you for joining us today.

Please provide quick “yes” or “no” answers. In your view, is the bill unbalanced?

Mr. Alain Pineau: Yes.

[*English*]

Mr. Bill Freeman: Yes.

[*Translation*]

Mr. Pablo Rodriguez: Is it unbalanced to the detriment of creators?

[*English*]

Mr. Bill Freeman: There's no question about that, both in the music sector and certainly in the education sector—the education exemption, as we call it. It would be very damaging not only to the writers but to the publishers as well.

[*Translation*]

Mr. Pablo Rodriguez: Just to set the ground for the debate, do you feel that, if it were passed in its current form, this bill would be a step back for our creators, the cultural community and our artists?

Mr. Alain Pineau: That's exactly what we have come here to tell you.

Mr. Pablo Rodriguez: Okay.

[*English*]

Mr. Bill Freeman: Yes, I think there's no question about that.

[*Translation*]

Mr. Pablo Rodriguez: Mr. Pineau, I would like to talk about education and extending fair dealing to education. If I understand correctly, you would just like to eliminate it.

Mr. Alain Pineau: That's where all our members stand. We bring together many groups and organizations. The general position of our members is to remove it.

If it cannot be removed, it could perhaps be incorporated as fair use. It is absolutely imperative to remove this exemption and clearly define the other provisions. Mechanisms are already in place to offer fair and equitable compensation to creators. That costs universities little. The system is in place and the collectives exist. I don't think we should disrupt the system by introducing vague and confusing concepts.

Mr. Pablo Rodriguez: Okay.

Mr. Freeman, is your solution also to remove the word "education"? Or do you think that we could get the work done by better defining the term "education" or by introducing a test? I am not getting the impression that you are clearly requesting that the word "education" be removed from the provisions on fair dealing.

[*English*]

Mr. Bill Freeman: First of all, let me just say that this educational exemption is going to be very damaging to writers. Writers in English-speaking Canada—I know because I'm a former chair of the Writers' Union—are up in arms about this.

Other than really totally removing it, I don't know that they're going to be satisfied. There may well be ways of modifying this that make it more acceptable. We certainly would be open to looking at that, but sir, this is going to be very damaging. The collectives are working very well in English Canada and French Canada.

I think this bill should be supporting that and strengthening it.

[*Translation*]

Mr. Pablo Rodriguez: I agree with you. That could be extremely damaging to authors and people who make a living from writing. Other sectors will also be affected by including the term "education".

Without going so far as to remove the word "education", is there a way to restrict the scope of this term by really defining it, making sure that it does not refer to professional training or something else, and by perhaps including the Berne three-step test or a more stringent test? Don't you think there is a less radical way of doing things than removing the term "education"?

[*English*]

Mr. Bill Freeman: We would certainly support putting some part of the Berne test in this. The difficulty is that it's all about fairness. That's going to lead to more litigation. We're concerned about that.

Yes, that would help considerably. You know, I'm not a lawyer. I think there has been huge misrepresentation, frankly, in the education sector as to how this is affecting people, the way the existing system.... I have friends in the education sector and they tell me this is a problem. It needs to be clarified. Maybe in part we're to blame for not clarifying things, but when the licences are given, the school teachers do have the ability to copy material and get it to their classrooms.

We think this is good pedagogy, incidentally. There's nothing wrong with excerpting a chapter out of a book.

● (1125)

[*Translation*]

Mr. Pablo Rodriguez: Thank you.

Mr. Pineau, what do you have to say?

Mr. Alain Pineau: I would say that yes, there are perhaps ways to minimize the negative impact of the exemptions being granted.

I would like to stress what you were saying about the Berne three-step test. We recommend that all exemptions undergo this test and that the test be included in the bill so that we can quote it in courts, if necessary. Putting all the exemptions to the test would be in conformity with the international treaties that we have signed and it would be an additional guarantee for artists. This test is better than the one from the Supreme Court.

Mr. Pablo Rodriguez: I agree with you on that too.

If I understand correctly, those are just a few general recommendations proposed by the Canadian Conference of the Arts, but there are more specific ones presented by some of your members.

Mr. Alain Pineau: For three and a half months, the Canadian Conference of the Arts has been working with its members and other people around the table on this issue. We have been trying to reach common ground. What you see on the table are our common positions on what needs to be done to Bill C-32. Our members, who are experts in various fields, will be making more specific proposals.

Mr. Pablo Rodriguez: I have 30 seconds left, Mr. Pineau. Could you further clarify one of your amendments? You said, and I quote:

> Restrict the "private purpose" exception to enabling individuals to make private copies exclusively for their own private use, subject to equitable remuneration for rights holders of all categories of works.

How does that work?

Mr. Alain Pineau: The first part is relatively easy. It has to be restricted to "private use". Right now, it's "private purpose".

[*English*]

My purpose could be to give it to my great aunt or to spread it through the school or whatever. The language, in terms of legal terms, is too vague there. Private use in the current bill is certainly more restricted and should be maintained.

[*Translation*]

Mr. Pablo Rodriguez: Thank you.

[*English*]

The Chair: Thank you.

We'll move to Madame Lavallée *pour sept minutes*.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much.

Mr. Pineau, you have indicated in your presentation that the major problem with Bill C-32 is that it fails to recognize the existence of two very different kinds of markets. You have said that the bill proposes the same solutions for both markets. When I was reading that, I told myself that it really is a key aspect. It really is a question about striking a balance between creators and broadcasters. And we learned that this had been the case for all legislation on copyright.

You are saying that creators are the injured party. You used the example of the digital lock. Could you tell us more about the imbalance you have noticed, especially in terms of digital locks? We see very clearly that the bill is certainly not built around remuneration for artists. In fact, as you also mentioned, they are being deprived of sources of income.

We are also under the impression that the people who designed the bill think that families are going to buy two identical CDs or they will download things twice if there's a digital lock. I prefer not to start labelling this way of seeing things, but let's just say that it's completely ridiculous.

Mr. Alain Pineau: I'm sorry, but I lost track.

Mrs. Carole Lavallée: I am asking you to tell me more about the imbalance you have noticed.

Mr. Alain Pineau: The problem is fundamentally the same for multinational corporations and artists alike: they want to be compensated for their work, products and intellectual property. This bill is ideal for "big" players who have significant interests at stake and are most afraid of piracy, but are able to protect themselves. So it's not a problem for them.

But the same instrument, which is mainly about locks and courts, is put forward for people whose situation is completely different. As the gentleman said earlier, this difference applies to their market, their work and their industry. These are one-person companies that fall under small business. We are trying to use a tool for big ships on small rowboats, and that does not work.

Mrs. Carole Lavallée: You haven't talked about the modernization of the private copy system that would make it possible to extend the royalties currently collected from blank CDs to more modern digital audio media.

What do you think about that?

● (1130)

Mr. Alain Pineau: That's where we and our members stand. We are well aware that the well has been poisoned by the label attached to the current system. The logical thing would be to apply this concept to other media. If it is impossible to agree on this solution, I think it will be necessary to find another one so that people are not losing income. Collectives and all small creators will become weaker. They could become famous one day, but they always start in their backyard or their garage. These people won't have the chance to penetrate the market. The others, artists making a bit of money here and there, will not have the chance to grow either.

So we are jeopardizing our creativity. Frankly, I think that it would almost be better to pass this bill. We don't want to hinder the passage of this bill, since it works well for many people who need it. We have no objection to that. In our view, they are also people from the cultural industry. That's why we support them. At the same time, we should not create "collateral damage"; we have to find a special system. There is a degree of urgency in passing the bill. If you are not able to make the amendments I have just described, then pass it for the sake of those who will benefit from it, but make the commitment today to meet again next year, not in five years.

Mrs. Carole Lavallée: So do you want us to pass Bill C-32 in its current form?

Mr. Alain Pineau: No. The list of amendments is there. Most people will speak to that, and they will even take it a step further.

Mrs. Carole Lavallée: I'm sorry, Mr. Pineau...

Mr. Alain Pineau: If you are not able to come to an agreement on this issue politically, I advise you to pass this because it is beneficial for some people. But we will have to get together next year because this doesn't make any sense. There is too much "collateral damage".

Mrs. Carole Lavallée: Do you think it's realistic to chop up the bill and keep only the parts we all agree on?

Mr. Alain Pineau: I have to say that it is ultimately a technical matter. Once we have the big picture, perhaps there will be obstacles to overcome. We haven't explored that avenue. I'm not sure whether it can be done or not.

In our view, it is better to continue living in the present state of uncertainty. I am going to continue recording my shows so that I can watch them the next day and not go to prison. We will continue to lose income, but at least we won't be eliminating the $126 million that are currently flowing through the system. It has been proven that these figures are reliable; we have taken a close look at them. Everything is distributed in amounts of roughly $400,000 or $500,000. I don't have the exact numbers; we would have to add up the numbers from the various associations and those who get money.

I think that's what you have to consider. What is good for some is not good for others, for whom things are more complicated. Right now, I am telling you to do what's good for some. It is unfortunate, but you are elected to deal with difficult problems. And let's come back next year.

Mrs. Carole Lavallée: Is it possible to find a balance between the rights of authors and the rights of broadcasters? I am using the word "broadcaster" in its wider sense.

Mr. Alain Pineau: Yes, it is possible. And it is possible to find a balance between the rights of consumers and the rights of authors.

A right has already been recognized. It is a property right, not a fantasy. It is an intellectual property right. It applies to artists, intellectuals, all kinds of people, and companies. It includes patents and what have you.

Why should a group be penalized because its system does not fit in with the rest? We just have to accept that the arts and culture system is never quite in line with the rest.

Mrs. Carole Lavallée: Do I still have time?

[*English*]

The Chair: You have 30 seconds.

[*Translation*]

Mrs. Carole Lavallée: You have clearly shown your support for the education exemption. You said that education should be removed. How do you feel about changing the definition or defining education? Don't you think that this would be like accepting that young people and the entire education sector will not pay for copyright when we should actually instill in young people this wonderful principle?

Mr. Alain Pineau: I completely agree with that and about the principle. That is why this is a fallback position for us rather than saying that they cannot remove it because, politically, it is motherhood and apple pie. They should at least change it to soften the impact.

The problem is that impacts are mixed in Bill C-32. For example, in a different context, there can be an exemption for something else. When we look at it in this way, we have to say that if you want the bill to be passed, you have to remove all that, because it will be extremely harmful.

[*English*]

The Chair: Thank you.

We'll move to Mr. Angus.

● (1135)

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you.

Thank you, gentlemen, for coming today.

The issue of establishing a new copyright regime goes to the original issues of what copyright was based on, which is remuneration and the public's right to access those works.

The government says this bill will restore the market. But it seems to me, from my many years of trying to feed my family on copyright, that a market is based on remuneration. You can't create new business models unless there's a way that you actually get paid for it. And the criticism we're hearing is that this bill, while giving certain rights for people to access works, has been called an attack on collective licensing.

Is it an attack on collective licensing?

Mr. Bill Freeman: I think there's little doubt that it is an attack on collective licensing.

Frankly, what we had been hoping in the creator community was that the legislation would strengthen collective rights licensing, because that's the way so many of us are getting income. It's the way the material is being distributed out there, and it's making it easy for distribution. We were quite surprised to see how it really is.

I've already given my view on the educational exemption. I would support the idea that Alain was talking about of clarifying it. Yes, we would support that. But this is going to be very damaging. I'm not a lawyer. I'm not going to speculate how it should be done, but please, please address this.

I think Marvin might have something to add about collective licensing in his field.

Mr. Marvin Dolgay: Agreed.

I'd like to thank Alain, actually, for pointing out that most of us in the sector are engaged in small business. The idea of not getting remuneration for our works would hurt the marketplace, because we wouldn't exist. And if we don't exist and there's no inventory, there's nothing to consume. That makes a pretty simple answer to the question, I think.

Mr. Charlie Angus: Just looking at the bill and crunching numbers, we're looking at musicians alone losing $41 million in revenue through the mechanical royalties that are being taken away. If we don't update the digital levee—and my colleagues seem to think this is the greatest political campaign they can run on, because they're going to lie about the numbers—we're looking at a $35 million shortfall for musicians.

We've been told that the market will be restored if we adopt the mechanisms of lock and litigate. But is there any evidence that individual musicians, individual creators, are going to be able to make any living through locking and litigating if they're not being remunerated for the copying of their work?

Mr. Marvin Dolgay: We won't be able to afford the litigation. It's pretty simple. If a creator wants to put out a piece of work for promotional purposes or do anything they want, they have the right to do that, but there must be some sort of teeth somewhere to protect their works so they can get paid for them. It's simple. To me, it's a payment for use; if our work is being used, if it's being enjoyed, if it's being consumed in the marketplace, there must be some payment for it. The balance right now is free. Free is not balance. There's got to be some money involved, and there has to be an exchange.

Mr. Charlie Angus: I'm interested in the discussion on language around the fair dealings, because I think, for all of us as legislators, it has already been defined by the Supreme Court, so it's the elephant in the room. We have to come up with language on fair dealing. I see there's a certain amount of apprehension because there are elements in this bill—for example, subsection 30.9(6)—that specifically strike out collective licensing rights for copying. We are going to have to deal with this.

Mr. Pineau, with all due respect, I don't think as legislators we can simply say we're going to make fair dealing go away because it's been defined. What kind of language do we need to ensure that we're not opening the barn door, that we're ensuring that people are accessing the rights the courts have defined, but that collective licensing is not unduly undermined to the point that we're going to see serious impact?

Mr. Alain Pineau: As I said, I think you will receive specific answers to your questions from our members. I'm just here to flag the broad issues, and I'm not a specialist. I acknowledge that this notion of fair dealing seems to be a slam-dunk conclusion, but it cannot prevent me from saying that it's a wrong decision, whether you're forced into it or not.

I thought the courts were there to interpret legislation and not necessarily the opposite. In some cases, yes, with the charter and everything. I don't know whether that judgment of the Supreme Court was linked to the charter. I should know, but I don't, so I give you that provisional answer.

You will have people coming here over the coming weeks, because we've been working with them, who I believe will be proposing or raising specific issues.

● (1140)

Mr. Charlie Angus: Thank you.

Mr. Bill Freeman: I would have to concur with what Alain says. I'm not a lawyer, and I can get into real trouble by making a suggestion that is offside, but it really has to be addressed. I've been present in discussions like this on what are we going to specifically propose. People are still working on that, but they will be here with specific suggestions.

I'm sorry, that's a real cop-out.

Mr. Charlie Angus: That's fine. I don't want to put you on the spot. I think my concern out of this bill is, number one, we want to have a bill that passes and ensures that the remuneration streams that have existed aren't attacked and dried up. We also want to make sure that we come out of this so that you as creators are not locked into endless litigation. I know that's been raised again and again, but I think if we don't have some clarifying language around fair dealing, we are going to be in the courts anyway. So perhaps that is something we can do at this committee, try to provide some kind of direction so that we're not facing years and years of litigation, which may or may not happen regardless of the bill. I think it's incumbent upon us to try.

Mr. Bill Freeman: Okay.

Mr. Marvin Dolgay: I also think it's important that you understand that with those years of litigation, you could lose a generation of composers, artists, emerging artists, who will not be able to exist. They'll become hobbyists, while the lawyers, the politicians, and everybody will be making a lot of money and working on this; in that stream, we will be at the bottom of our food chain again. We just can't survive, and we're going to lose a generation.

Mr. Charlie Angus: Mr. Dolgay, last year 100,000 American citizens were sued for downloading. That's dramatically up over the 35,000 who were sued, apparently, in the four or five years before that. From my talks with the musician community that I know in the United States, nobody's feeling all that confident that this is a solution. The only confidence they have is being remunerated for the fact that people will copy regardless.

I'd like to ask you a question in terms of the need for some compensation in the private levy, because we've been here before. You probably remember when cable TV came in. I'm not bragging here, but I co-wrote a song that got a Juno nomination, and it won the Juno for video of the year. I made $56 that year. They decided that cable TV shouldn't have to pay for use of your music because they were doing a service, and there was a big hue and cry, that if video TV were made, that whole new market would disappear—

The Chair: Mr. Angus, we're going to have to wrap it up.

Mr. Charlie Angus: In the end they paid up and it went on.

Do you believe this can happen with a digital levy?

Mr. Marvin Dolgay: I'm sorry. I'm not positive on your question.

I do believe that the wrong people were sued. I don't want to sue the consumer. I don't want to sue the mother or the grandmother, or people like that, but there is—

The Chair: Okay. That's going to have to be it.

We're going to move to Mr. Lake for seven minutes.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair. Thank you to the witnesses for coming today.

Mr. Pineau, in your opening statement you used—and you reiterated it a couple of times—a figure of $126 million a year and counting, in terms of what the bill takes away. Can you give a specific accounting of that number? Where does that number come from specifically?

Mr. Alain Pineau: I cannot provide that to you today—I don't have it with me here—but it's based on figures we have collected, and we have all the sources and all the identification of the sources for that. This is a certain figure; it does not cover the loss of revenue that is due currently to piracy or to private copying usage without any form of compensation on new devices, like iPods and iPhones. It does not cover that, because we won't venture there. But it's substantial revenue that is lost because there is no system extended from the old system.

That's why we're pushing for those things. The $126 million is a firm figure, and we will put it on the public record.

Mr. Mike Lake: Okay. We'll get a line-by-line calculation of that. Maybe, though, in the interest of the discussion today—

Mr. Alain Pineau: Not the distribution list but the revenue for specific years, yes. I believe I will venture to say that we can probably provide you, not tomorrow but within a reasonable time, with a review of the revenue for that $126 million, which is 2009, if my memory serves me right. We can probably go back to 2000, or something, to show the trends and everything and the importance of those revenues for our artists and creators over the years.

● (1145)

Mr. Mike Lake: Okay. For the purposes of the discussion today, though, surely you can give a more general accounting of the $126 million.

Mr. Alain Pineau: Now—

Mr. Mike Lake: We hear these numbers thrown out there and they just sit. They get reported and there is no backing—

Mr. Alain Pineau: No. I wish I had brought this, but I'm sure my colleagues can help me. This is the money that is collected, for example, by Access Copyright and COPIBEC for all the documentation that is used in the education system, which this bill will eliminate or threaten. It includes the payments that are made by SOCAN to musicians. It includes the payments that are made by broadcasters for the ephemeral exemption currently. The system is abolished by the bill if it passes as it is.

I can provide you with the details. I'm giving you those from memory.

Mr. Mike Lake: Okay. I just get concerned sometimes when I hear numbers like $126 million. We're seeing that people can't actually back up the numbers—

Mr. Alain Pineau: Yes. I knew you would ask.

Mr. Mike Lake: They're often using someone else's numbers, and these numbers float out there and there's no backing to them.

Both of your organizations represent many members, and I think it's important for us, who are, typically in a study like this, going to hear from different groups coming in and telling us what they don't like about the bill and what they'd like to see changed about the bill.... But I think it's also critical for us to understand what each organization likes about the legislation, what they want to make sure stays within the legislation as we discuss what possible amendments might be put forward.

Mr. Pineau, could you start by talking about specific things about the legislation that are important and need to pass that your members want to see remain part of this legislation?

Mr. Alain Pineau: First of all, I think the ones that we support I have mentioned in my presentation, and I will find the page to go back to that. I'm not going to be specific about the people who come here and say they're very happy with the bill and say thank you and pass it tomorrow because it's very urgent. I think you have the list from them. We're saying, okay, it suits them and it's no skin off our nose. It's fine. You will get the list from them.

From us, I think some Bill C-32 elements are positive: distribution rights, the reproduction and moral rights for performers, the length of the protection of sound recordings, and the rights to photographers. The problem is that with the exemptions, many of these rights are undermined on the next page. That's the problem. You give rights to photographers and then you put them in jeopardy through the exemptions that you grant on the other side. It's...what's the expression?

Mr. Bill Freeman: If I can add to that, ACTRA, the performers' union in English Canada, is very happy about moral rights for actors. No actor would like to see their image supporting some cause they don't support. Also, the photographers that I talk to have generally been quite happy. So yes, there are certainly things that we support in the bill, and we want to maintain those.

That's why I think our position has been that we would like to see major amendments to the bill, not the defeat of the bill. We want it. We want copyright reform to go ahead, absolutely.

Mr. Mike Lake: Specifically on the making available right and the right of distribution, Mr. Pineau, you referred to that. Why are they important to your members?

Mr. Alain Pineau: They're important to a certain part of the sector in particular. I know, from having done business with them in the past, that they're very important for the companies that are represented by CRIA, for example. Mr. Anderson has been asking for this right since the WIPO treaty was signed in 1997, so I know it's an important component of the cultural sector.

It is not necessarily.... I'm not an expert there. I will defer to my colleagues here, for example, and musicians, as to whether the right of distribution is.... The right of distribution is important to individual members whose case I'm pleading today only if they have the instruments to have them applied, and that is through their collectives.

While I will not say that say this bill is an attack on collectives—because I don't give intentions to anybody—certainly the casualty will be there nonetheless. It is undermining the collective system, and it's not proposing something that works for individual artists, as we've heard.

Mr. Mike Lake: And of course we have the opportunity. The bill doesn't specifically address the private copying collective, the issue around the iPod tax that the opposition parties sort of favour, but we will have the opportunity to deal with a bill. Charlie Angus, of course, has a bill put forward to address that issue, which is coming down the pike in the near future here, so we'll have an opportunity to address that issue. I don't believe this legislation is the place to try to add in something that's not there.

What effect does piracy have on your industry? Have you done any kind of calculation? You've done a lot of calculations to come up with that figure of $126 million. What negative financial impact does piracy have?

● (1150)

Mr. Alain Pineau: First of all, if I may, it's not the iPod tax. It's not a tax. It's one way—it can be described as a tax, but it's not a tax—of compensating the use of the right of property. If we can't find a better system.... We had one before and the technology has made it completely obsolete. What this bill is proposing is that there's no alternative for the smaller guy. There's no alternative for the hundreds of thousands of small artists across this country in a number of disciplines. That's the problem. So it was not a tax; it's been labelled as such, and politically it's a good football.

We're looking for alternative solutions. One of the opposition parties has put a solution on the table. It's not ideal either, but it's something to look at. I don't know, but my pleading to you is “don't take that money away”.

The second point is that you say it's my industry, and it's not my industry; I'm a very large coalition of organizations of all kinds, so it's not my $126 million. There are so many millions for musicians and so many millions for writers and so many millions for visual artists. For visual artists, by the way—I'll take the opportunity—this is something that you could—

The Chair: Okay. You're going to have to wrap up now—

Mr. Alain Pineau: Yes. I'm sorry.

The Chair: —as we're well over.

Thank you.

We're going to move to the second round of questioning.

Five minutes, Mr. Garneau.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

As a beginning remark, my Conservative colleagues are caught in some sort of time warp when they keep talking about iPod taxes. We're now in 2011. That was taken off the table a long time ago—

Voices: Oh, oh!

Mr. Marc Garneau: —and very, very clearly.

[*Translation*]

When we say businesses, we mean small, medium-sized and large businesses. We know that large businesses start off as small businesses. We recognize their fragility and we are trying to give them a chance to grow.

[*English*]

There may be parallels with artists. There are single artists who are individually self-employed. They may not want to become big organizations and may be happy to stay at that level, but I think what is true is that they are a little more vulnerable than larger organizations.

Now, one of the points that I keep hearing—and you brought it up today—is the issue that if you feel your rights have been violated, you have the option of going to the courts. However, most individual artists say repeatedly that this is an onerous and expensive process.

I have a question. You belong to associations and groups. Is there any service provided within those organizations and groups, if your rights have been violated, to provide resources to you to help with the litigation process? Or are you literally on your own?

Mr. Marvin Dolgay: There is some within the collectives, but please understand that it is our money. It's not the collectives that are making money. They collect for us, administer our rights, and distribute our rights. SOCAN runs extremely efficiently. The numbers are public to the percentage of their overhead, and the rest of the money is distributed. If that litigation and those moneys get held up, they don't flow to where they're supposed to be.

So in theory there are dollars in there, but they come out of our pockets. When you're talking about $1,000 or $5,000 per member, that has huge implications for our incomes.

Mr. Bill Freeman: It's exactly the same in the publishing and book sector. We ultimately have to pay for it.

Mr. Marc Garneau: Thank you.

I believe Monsieur Pineau brought up

[*Translation*]

the YouTube issue,

[*English*]

the issue of so-called mashups and the provisions in the current proposed Bill C-32. I would like to know your position on this. Would you prefer there not be an exemption for mashups, or would you be happy if the exception was clearly defined so it actually said what was legal and what was not legal?

● (1155)

Mr. Alain Pineau: At the end of the day the issue of mashups implies the responsibility of those who make them possible. There is somebody at the end of the line in the YouTube case who makes money out of the mashups and the use of the works being made.

The way to collect that money is through that system. That's why we're saying that for the time being, if you cannot find a way to make ISPs responsible and the companies that make money out of the work of others pay for it, there are systems that exist. They could be included in the act here to make sure that the person who profits from his work at the end of the day has to pay him something. I think that's a basic principle in the right of ownership of intellectual property or any kind of property.

Mr. Marvin Dolgay: Sometimes the definitions of non-commercial and commercial sites or entities are very vague in the bill. YouTube makes a lot of money by having people visit their site to consume content.

Mr. Marc Garneau: I understand, and your points are well taken.

At what point does a mashup come so close to being a copy of the original work? In that sense, is there some further definition required?

Mr. Bill Freeman: Marvin has had some of his material mashed up.

Mr. Marvin Dolgay: Yes. I got an e-mail from someone who said to check something out, so I went to YouTube. I had written a theme song for a kids' show, and there were more than many versions of little kids and teenagers performing this work on YouTube. The parents had posted it and the kids had posted it. I have no problem at all with those users generating that content and putting it up there. It's the aggregation of it and the monetization of it in some forum so we don't get our content.

As far as the mashups, where you can define what is a mashup, etc., I'd have to leave that to different definitions.

Mr. Bill Freeman: SOCAN could go to YouTube and get a licence for that, and the money would flow back to Marvin and all of the other people. SOCAN is set up to do exactly that.

The Chair: Okay. Thank you very much.

We'll move on to Monsieur Cardin for *cinq minutes*.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chair.

Good morning and welcome, gentlemen.

Since I probably have less than five minutes to ask some questions, I want to go back to two specific issues.

First of all, I feel that anyone who calls royalties taxes is being intellectually dishonest. That's like contravening minimum wage legislation and saying that increasing the minimum wage is a tax imposed on companies. That scares people too.

As to the question asked by the member on the government side about the $126 million, that's already proof that, when the government prepares a bill, it does not consider all its potential impacts once it is implemented.

I think he wanted Mr. Pineau to give him the figures because the government probably had not done its job.

The objective of the act was to ensure that the knowledge economy, broadcasters, consumers and creators get their money's worth in an equitable way. The media have changed so quickly.

Let us remember that, at the first meeting of the committee when the ministers came, we clearly saw that innovation and technology played a major role; they pretty much came first. If the government went further, technology should allow creators to be compensated appropriately. They would just have to adjust the technology so that creators can be remunerated accordingly.

The question I ask myself is this. I have looked at most of your recommendations. They have to be adjusted for international treaties. On some points, doesn't the government go beyond international requirements? Are there any places in the world the government should follow and get some ideas on how to compensate its creators properly?

● (1200)

[*English*]

Mr. Marvin Dolgay: It's a complicated question for a creator to answer. Obviously the three-step test could be adopted. There is vagueness in that language as well. At least it gives the creator community the language in the courts to understand that remuneration is a right that has not been given away. To define what it is and where it is still puts us in the courts for 10 years.

Alain.

[*Translation*]

Mr. Alain Pineau: I regret not being able to answer your question on international examples as specifically as I would like. There are international examples that should not be followed, such as the United States. It is proven that the system they have adopted does not work; it is not a solution.

Somewhat controversially, France is adopting some measures that involve... Again we are talking about taxes. The people who are affected, the large companies, are talking about a tax on profit when it actually contributes to making works accessible to the public, by taxing the people who make money from the system at the source. And the people who are making money from the system are the distributors. Basically, that is where we have to go look for the money. Then we can give everyone the right to make copies as they please. We must adjust the amount charged at the source.

At home, we have a mechanism called the Copyright Board that is highly respected. For years, as part of a quasi-judicial process, this organization has created a balance between parties, specifically between the interests of users and those of consumers. That tribunal has an appeal process. There's a whole system in place. Why not use it wisely?

The direction the French seem to want to take is to collect the royalties at the source, from those who make money using the system, and make things accessible to everyone. It's a way to collect money just like the way taxes are used to fund the university system or the hospital system. I pay like everyone else and I use it when I need it, and it costs nothing, or almost nothing. It is a revenue collection system that goes hand in hand with expenditures and would make access easy in the case of intellectual property.

[*English*]

The Chair: Thank you.

We'll move to Mr. Del Mastro for five minutes.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you very much, Mr. Chair. Thank you to the witnesses.

I was interested to hear Mr. Garneau's comment that it's 2011 and they no longer support the iPod tax. It's almost like a weather forecast sometimes, Mr. Chairman. In 2010 they were arguing in support of corporate tax reductions as a means to create jobs. We know that is apparently now the devil. Apparently it's 2011, and that position has also changed. It is interesting, though; you never quite know what you're going to get when the positions are rapidly changing.

But you know what you're going to get with our party. You're going to get consistency, in particular when we stand on behalf of an industry and try to recreate a market that is under threat. That's what Bill C-32 seeks to do.

It was interesting that Madam Lavallée pointed out that the bill is really about industry versus creators, but there's a very important third aspect to copyright, which is the consumer. It needs to be fair to all three parts and it needs to be balanced. That's what we've really sought to do.

I was interested when we talked about fair dealing. First of all, I want everyone to know that a lot of the debate we seem to be having here revolves around the fact that I don't think people understand fair dealing. There's some confusion with it even here, with the members on this committee. But if you look, for example, at the education exemption on fair dealing, people keep on going back to the fact that you'll be able to make copies of entire works and there will be no compensation. That is fundamentally false. It's not true. Copying is not fair dealing—and it does not wipe out that collective. In fact, the educational institutions are not seeking to have those collective funds taken away.

Mr. Angus thinks we should get into and open the Pandora's box on fair dealing. What I'd like to know is whether you support the Berne standard and the five-part test that was established by the Supreme Court. Because this is the basis for fair dealing. That's what the bill works with. If you support that, and the bill doesn't take away fair dealing—in fact, it doesn't amend fair dealing—then I'm just not quite sure what the concern is.

● (1205)

Mr. Bill Freeman: Sir, first of all, a lot of writers also are teachers, and we've certainly heard about the education and some educational administrators saying this is going to be wonderful and they're never going to have to pay Access Copyright another dime.

I agree that it's certainly open to interpretation, but this is a huge problem—

Mr. Dean Del Mastro: They should phone me and I'll correct this.

Mr. Bill Freeman: This is a huge problem that we're having. We're talking about a lot of income at risk. I've read the legislation as carefully as I can, and I don't know whether you're aware, but in the United States, fair dealing.... There's virtually no payment for copying in schools in the United States. This is what a lot of educators have in their minds. It's going to lead to....

I'm sorry.

Mr. Dean Del Mastro: I just need to correct something you just said.

Mr. Bill Freeman: Okay.

Mr. Dean Del Mastro: The United States and Canada are very different.

Mr. Bill Freeman: Very different.

Mr. Dean Del Mastro: The United States does not operate with fair dealing.

Mr. Bill Freeman: Yes. It's fair use.

Mr. Dean Del Mastro: They operate with a system called fair use.

Mr. Bill Freeman: That's right.

Mr. Dean Del Mastro: Fair use is very open-ended.

Mr. Bill Freeman: It's very open-ended.

Mr. Dean Del Mastro: You can argue fair use on just about anything. But fair dealing is very precise on what fair dealing is. We have the Berne standard and the five-step test—sorry, six—that has been established by the Supreme Court that guides the definition of what "fair dealing" is. That does not exist in the United States.

Mr. Bill Freeman: If you leave the legislation the way it is today, we're running into huge problems with the interpretation as to what it means. My interpretation is going to be different from yours and someone else's. Who adjudicates those problems? The courts. That's what you're inviting.

We think it will be a major rollback of income for Access Copyright. I think you should recognize Access Copyright as a business that has over $30 million now distributed to writers and publishers. Copibec in Quebec is $14 million. We've been told all of that money is at threat.

Mr. Dean Del Mastro: That's not true. But I would say that your point on litigation is no different from the way it is today. It's no different.

The way copyright laws, the fair dealing laws, apply today will apply once this bill is passed, and there is no difference as to whether an issue would be litigated or not.

Mr. Alain Pineau: There is fair dealing currently in the act—you are absolutely right—but by introducing elements for research and for comment and that sort of thing, there are a number of exceptions allowed that the tests can apply to. Yes, the three-step test should be included in the act.

My understanding is that by introducing education as part of fair dealing you allow a number of people, like the one who was quoted a minute ago, to say they can push the envelope. It is interesting that nine ministers of education, not ten, are for that particular clause. In Quebec, there is a recognition that there is a system in place, that there is a fair compensation that is due, and that we should maintain the system.

I'm no lawyer, but you have a number of legal opinions on the table, including from the Barreau du Québec, which says this will lead to litigation. I believe there are other witnesses who will be here in the coming days who will support the same point of view.

That brings me back to my original message: it doesn't work for individuals to go and sue in front of the courts when there is so much ambiguity built into the law itself.

The Chair: All right. That will be it for this panel in this hour.

My thanks to our witnesses. We'll suspend for a few moments.

● (1205)

(Pause)

● (1215)

The Chair: We will call this ninth meeting of the special Legislative Committee on Bill C-32 to order.

We have two witnesses from the same organization, John Barrack and Reynolds Mastin. I believe, Mr. Barrack, you're going to speak. Is that correct?

Mr. John Barrack (Chief Operating Officer and Chief Legal Officer, Canadian Media Production Association): We'll both be addressing the committee.

● (1220)

The Chair: Okay. You have the floor for five minutes in total.

Mr. John Barrack: Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, thank you for inviting us to meet with you today.

The CMPA represents the interests of almost 400 companies engaged in the production and distribution of English-language television programs, feature films, and interactive media productions in all regions of Canada. In 2009-10, the industry was responsible for over $3.8 billion in production volume and the creation of over 90,000 jobs.

Our members produce *Degrassi*, *Corner Gas*, *The Rick Mercer Report*, and *This Hour has 22 Minutes*, to name a few. Our entire industry is also on tenterhooks to see whether *Barney's Version* and *Incendies*—both independently produced films—take home Oscars later this month at the Academy Awards.

As an association whose members are both owners and users of copyright, we recognize that copyright reform involves an exceptionally delicate balancing act. We will limit our remarks to five key issues that we believe are key to getting the balance right.

First, the CMPA fully supports the TPM provisions of Bill C-32. Protection for TPMs is critical to ensuring choice for both creators and consumers in the digital marketplace. TPMs enable independent producers to experiment with different business and content delivery models. They also provide a vehicle for maximizing the range of content and services available to consumers.

Where TPMs are overused or misused, consumers can and do respond by allocating their entertainment dollars elsewhere. But without them, the digital marketplace risks becoming a digital desert where less and less high-quality, professionally produced Canadian content gets made. This would be a huge loss, not only for Canadians but for consumers and citizens, and also for international audiences who love the content our members produce.

Second, we were very pleased to see that parody and satire would be added as protected activities under the fair dealing exemption. This would bring an end to the current uncertainty regarding parody and satire in Canadian copyright law, which can have a chilling effect on free speech, including political speech.

We're confident that all members of Parliament would support an amendment that would give Rick Mercer an even freer reign than he has already.

Reynolds.

Mr. Reynolds Mastin (Counsel, Canadian Media Production Association): We know there has also been much comment about the addition of education to the fair dealing exemption. We share the widely held concern that its ambit is too wide if left undefined and would likely lead to considerable and costly litigation. Placing some definitional parameters around the provision is necessary and will provide much needed clarity for all concerned.

Third, we think that Bill C-32's inclusion of an enabling infringement section constitutes a very big step in shutting down the digital black market in Canada. Like other stakeholders, we would propose to slightly amend the section so that it would apply to services that are designed or operated primarily to enable infringement or that induce infringement. We would also recommend that the hosting and caching exceptions in Bill C-32 should explicitly not apply in circumstances where the service provider is enabling infringement.

As currently drafted, the hosting and caching provisions could inadvertently end up shielding massive commercial enablers, which we know is not the intent of the bill.

Fourth, while we fully appreciate the rationale for the user-generated content exception, our members are deeply concerned that it sets the creative bar way too low for what would constitute such content. What none of us want is a provision that might, for example, inadvertently permit a user to upload full seasons of *Degrassi* or *Corner Gas* to the Internet. In that scenario, the only thing that's being generated is lost revenue to the people who make *Degrassi*.

At a minimum, the exception should only allow an individual to create original, transformative, user-generated content for the person's personal, non-commercial use if all of the permitted acts can be considered fair dealings under the existing copyright law test.

Fifth, we would urge the committee to consider whether a notice and notice regime is really a sufficient mechanism for deterring widespread online copyright infringement. The simple fact of the matter is that merely sending letters to serial infringers is unlikely to get them to see the error of their ways. We therefore recommend that a provision be added to the bill that would allow an ISP to benefit from the bill's safe harbour provisions only if the ISP has adopted and implemented a policy to prevent use of its services by repeat infringers.

John.

Mr. John Barrack: Finally, I have a brief word about something that is not in the bill.

Over the past several rounds of copyright reform, we have requested of successive governments that producers be recognized as the first owners and authors of copyright in a cinematographic work. Currently, the Copyright Act is silent on this critically important issue. This omission has created needless additional uncertainty and costs for independent producers, for reasons that we would be happy to get into during the question and answer session.

Our thanks again to the committee for inviting us here this afternoon. We would be happy to answer any questions you may have.

The Chair: All right. Thank you.

We'll start the questioning with a seven-minute round.

From the Liberal Party we have Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Mr. Brown.

My thanks to the witnesses for being here. You'll probably have heard during your testimony that we had one of your gaffers here. Thank you for that help. The House of Commons can use all the help it can get these days.

You've raised a number of critical and important questions. One that has great interest for me is the extent to which the anti-piracy provisions of the act are sufficient. Is it your contention, Mr. Mastin and Mr. Barrack, that the current legislation would be able to discourage flagrant acts of piracy? We've had a number of examples of the $5,000 fine, but we have companies like The Pirate Bay that might be able to take a hit of $5,000 while they're making tens of thousands of dollars.

Do you have any comment on that?

Mr. John Barrack: I'll make an initial comment and then I'll pass it over to Reynolds, if that's all right.

Going back to this whole question of balance, I think any specific penalty provisions have to be mindful of where the violation or the infringement might be taking place and what is of real concern. The real concern is commercial infringement. We are not a culture—and I don't believe we're about to become a culture—where we're going to be attacking individuals with respect to copyright infringement. I think our real concern, long and short, is the commercialization of infringement. There need to be real deterrents. What we don't want to see is a penalty provision becoming a default licence fee that enables pirates to say that it is just the cost of doing business. That's our real concern.

Reynolds, do you want to add to that?

● (1225)

Mr. Reynolds Mastin: The only thing I would add is that while the $5,000 statutory damage award might be sufficient to deter people who are not in the infringement business, it is not going to be a deterrent for those who are. That's what we're primarily concerned about.

Hon. Dan McTeague: You had a comment about notice being insufficient. What model would you prefer to see? How would you see this committee if it were to make amendments in that area? I'm not asking you for the actual wording, but are you talking about a hybrid form of penalty that would distinguish between commercial infringers while making sure the penalties themselves are graduated in such a way as to deter?

What are you specifically asking for?

Mr. John Barrack: I think we're looking for something more along the lines of a notice and takedown type of regime, which we think would be more effective.

Do you want to comment further on that, Reynolds?

Mr. Reynolds Mastin: Contrary to what is often said about that regime, it does provide a balance and an opportunity for those who receive a notice claiming infringement to dispute that notice on a good faith basis. We think it's important that there be an equitable process, but we also believe that a notice and notice regime does not provide the deterrent that we need for serial infringers.

Hon. Dan McTeague: Okay. I think we've heard some witnesses who support that.

Let me go back to user-generated content. You had recommendations in that field as well. Do you want to expand on them?

Mr. Reynolds Mastin: One of the key questions facing the committee, given what you've heard from witnesses today and what you'll be hearing in the next few months, is whether it makes sense to take the provision out altogether, or, if a decision is made, to find a way to mould the provision in a way that ensures compliance with our international obligations. It ought not to allow people to do through the back door, so to speak, what they can't do through the front door. Then we need to look at carefully tailoring and amending that provision so that it achieves its intended purpose without leading to unintended consequences.

Mr. John Barrack: I think the practical problem is that it's difficult to define. We heard it from previous questioning of the prior witnesses who were up here. I don't think anyone in this room wants to see endless litigation on these issues, because uncertainty really is the devil's playground. It's going to make a lot of lawyers rich and not be a real service to anyone, including consumers. The more certainty we can create, the better. The difficulty in this context is how to define that certainty.

Hon. Dan McTeague: I had a concern about comments you made earlier about TPMs. There, you would have us do what as a committee, in terms of your own perspective.

Obviously, there is a serious balancing act that needs to occur between creators and those of course who buy something with the intention of using it for personal use. I know there are examples of where, if you buy a video, you might have three shots. You can use it to download onto your Blu-ray. You can do whatever you wish with it to a certain extent.

How do you, in your industry...? Can you cite examples of where there has been real damage done to representatives of your industry as a result of a lack of laws, if you will, or a lack of precision in law with evolving technology?

Mr. John Barrack: The difficulty here is that we are in an emerging marketplace and TPMs are extremely important in terms of allowing producers of content to really fully exploit the business models. The Government of Canada has invested in it heavily as well as the producer. So if we all want to see a return on our investment, of course there has to be a recognition of the consumer and consumer rights in that context, but there needs to be a real balancing that takes place.

In terms of the specifics, it's very hard to cite for you in terms of studies to say where is the quantum loss, because you can't measure your potential loss if you don't know what sales you've missed, if I can put it in those terms. That's the difficulty in quantifying value of piracy.

Our members keep coming back to these popular examples. DVD sales of popular Canadian television shows are a big business. The moneys derived from those sales go back into those companies, which then produce more great Canadian content. If you don't have those measures in place, you are eroding that business model. You can't necessarily differentiate if that money is being lost because there's a change in consumer behaviour or if it is being lost due to piracy.

● (1230)

Hon. Dan McTeague: Go ahead, Mr. Mastin.

Mr. Reynolds Mastin: Actually, you have covered it off pretty well with John.

Hon. Dan McTeague: I'm out of time apparently.

The Chair: Thank you very much.

We'll move to the Bloc Québécois, with Madame Lavallée, for six minutes.

[*Translation*]

Mrs. Carole Lavallée: Thank you, Mr. Chair.

Thank you very much for coming to meet with us this morning. If I understood correctly, you have not submitted a brief. I haven't received anything.

Mr. Reynolds Mastin: Not yet.

Mrs. Carole Lavallée: Will we be getting it?

Mr. Reynolds Mastin: That's our intention.

Mrs. Carole Lavallée: Okay.

You presented your document, but I only got the translation. I'm not sure I understood everything, so I will go back to it.

First, I understood that you had five points in the beginning. But when I did the math at the end, there were seven points. Is that correct?

Mr. Reynolds Mastin: I am counting six.

Mrs. Carole Lavallée: Okay. Points three and four can in fact be grouped. I counted two different points, with education, but I misunderstood. Again, I am really sorry about that.

I am not sure which point to start with because I think they are all significant and I know I won't have the time to address them all. But I understand that you share the industry's interests and that, as a result, you are quite in favour of Bill C-32.

Do I understand correctly? Are you more or less in favour of Bill C-32?

Mr. Reynolds Mastin: With the amendments we have recommended, yes. Generally speaking, yes.

Mrs. Carole Lavallée: But if the amendments were not made—the six points you have raised—could you still live with Bill C-32?

Mr. Reynolds Mastin: We are counting on the committee to find a way to make these amendments so that the members of our organization consider the bill reasonable.

Mrs. Carole Lavallée: By the way, you should be here around the table with us; you are very good at skating, I find.

You talked about protection measures. You said that people would be spending their money elsewhere if they could make copies of the films that you make. Is that so?

Mr. Reynolds Mastin: Yes, that's it.

Mrs. Carole Lavallée: Are you in favour of digital locks?

Mr. Reynolds Mastin: Are you talking about TPMs?

Mrs. Carole Lavallée: Yes. In French, we call them MTPs or *verrous numériques*, digital locks.

Mr. Reynolds Mastin: Yes.

Mrs. Carole Lavallée: So you are in favour of that.

Mr. Reynolds Mastin: Yes, absolutely.

Mrs. Carole Lavallée: That works well for your industry.

Mr. Reynolds Mastin: Yes, exactly.

Mrs. Carole Lavallée: By putting digital locks on films that are sold, for example, would prevent consumers from making copies for their friends.

Mr. Reynolds Mastin: That's exactly it.

Mrs. Carole Lavallée: I am happy to hear from you because we can see clearly that your needs, as a film industry, are not the same as those of the music industry. The music industry needs its music to be broadcast as much as possible and therefore expects remuneration. However, you would rather restrict distribution. In any case, people do not need another copy for their private use and, therefore, they don't need to get into the private copy system.

Are those your thoughts?

[*English*]

Mr. John Barrack: One of the things that need to be remembered is that we in our sector create content with the use of various unions and guild talents—actors, writers, directors, and so forth. When we compensate those performers, writers, and directors, we don't just compensate them based on what we call front-end work. We also have a royalty system in place, and that royalty system pays a percentage of revenues back to those artists. If we don't have those measures in place, we don't have those revenues. If we don't have those revenues, those artists don't get paid. It's not just the producers.

So there is a very delicate food chain here to ensure that we can keep the best artists in Canada.

[*Translation*]

Mrs. Carole Lavallée: My understanding is that the other difference from the record industry or the literature industry, if I may say so, is that when you make your film and it comes out, all creators, all artists have already been paid whereas in the record industry, when the record is on the market, no one has been paid yet usually, even if its creators have worked on it for a year.

Am I understanding the difference correctly?

Mr. Reynolds Mastin: We can confirm that for our industry, but we don't really know how the record industry operates.

Mrs. Carole Lavallée: So let's talk about your industry. I will talk to the people from the record industry about the other component.

That means that when you start filming, most people have started getting paid and, when your product is on the market, from day one, everyone has been paid. Is that right?

● (1235)

[*English*]

Mr. John Barrack: I guess if I were the performer, I might view it differently. I think I've been partially paid at the time of production, and I'm waiting to be partially paid; the other part of my payment will come after the product has been distributed. I guess the concern, if we have some TPMs, is that I'm not going to see those second payments. I'm not going to necessarily want to stay in Canada. I'm not going to want to continue to contribute to great Canadian content.

Mr. Reynolds Mastin: The basis of our industry, essentially, is that we divide the world into territories, and we license for a specific market. In those territories where the market has evaporated because we don't have the right frameworks in place for copyright, then the ability for the producer to actually recoup that investment in the film is gone. Any residual payments owed to performers also evaporate.

Mr. John Barrack: Quite simply, if you're an international distributor of a Canadian film or television program, you're not going to want to buy that program, you're not going to want to pay the Canadian company, if it's already in the world. If it's already gone into the world for free, why would you pay that Canadian company for those rights? That's when we lose a critical mass of talent in this country and our ability to continue to reinvest.

[*Translation*]

Mrs. Carole Lavallée: Before I close, I would like to talk to you about the education exemption. If I understood correctly, you are in favour of defining the word “education” better. So the education system has also been a great market for you. In fact, when your films are screened in schools, you usually collect some royalties. In addition, as you know, respect for the value of artistic works and the price we should pay to access them is an excellent principle to be instilled in young people and in the education sector.

[*English*]

Mr. Reynolds Mastin: You're absolutely right; the proposal we put on the table here was developed in a spirit of compromise, if you will—namely, that if we're going to have an additional head under fair dealing for education, we feel that the minimum thing required is that there be clear definitional parameters placed around education.

Mr. John Barrack: Again, we're not looking to make a bunch of lawyers—

[*Translation*]

Mrs. Carole Lavallée: Let's suppose that instead of writing the word “education”, they use the words “educational institution” or they define it. Basically, that means that educational institutions or schools, who currently pay for copyright, will no longer pay. We could be smart alecks and say that this will end up in court, but we know they have little chance of winning in the end.

[*English*]

The Chair: Okay, very quickly; we have to wrap up.

Mr. John Barrack: I think that gets back to Mr. Del Mastro's point. What we're hoping is that this bill will have sufficient specificity to eliminate the need for that kind of litigation and to make it very clear, whether we import certain tests into the bill or otherwise, that there is a copyright attached to the use of copyrighted materials in an educational context.

The Chair: Thank you.

Mr. Angus, go ahead for seven minutes.

Mr. Charlie Angus: Thank you.

Thank you for coming today. At the outset I'll say congratulations. I think the productions that are coming out of Canada in the last four or five years are almost unparalleled in terms of the quality of work that's come out of Canada since I can remember. I don't know why it is, but it seems to me there's a real renaissance in Canadian film, television, and independent productions. Of course, we want to make sure that continues.

I have a number of questions in terms of just trying to figure out how we're going to do this. The question of TPMs is certainly crucial to this bill. We certainly support the need to use TPMs to protect business models, to ensure that the investments creators make aren't just sent up the chimney as soon as their works are released.

You talk about support for the parody and satire provisions, yet if there's a digital lock on a product, they won't be able to excerpt it for parody and satire. Is there a balance so we can say if someone's doing it for parody and satire, they can circumvent the digital lock, or do you just say you have parody and satire, but if there's a digital lock, they don't have that right?

Mr. John Barrack: Again, I'm not an artist per se.

I thank you for your comments with respect to the quality of Canadian content having improved in the last few years. That's certainly something we're very proud of, and it makes our job of representing producers much easier when there's a broader public acceptance, both domestically and internationally, of our work. I really do appreciate those comments.

I think the difference with parody—and this goes back to the whole idea of definition—is that we're really trying to understand a true creative new use of something or making a really new work in the context of parody versus, again, abusing a mashup type of provision to effectively steal a copy of something, put a new top and tail on it, and say, "Now introducing season five of *Degrassi*", and calling that a mashup. The difficulty in this conversation is it's a continuum. Where do we find that balance?

I think this committee is probably going to have some very interesting clause-by-clause work to do in that area, and we would be very interested in contributing to that process to the extent that we can, but we couldn't possibly answer for you today exactly how we would do that.

● (1240)

Mr. Charlie Angus: I guess it's that issue of the continuum, because I've spoken with documentary filmmakers who are very concerned about the digital lock provisions preventing them from being able to excerpt works that are under copyright. If anything has a lock on it, they're not going to be able to use it. I asked one witness, and they said, "You can take a screen shot of a computer." You can't do quality work with a screen shot of a computer.

That's a legitimate work, where you're creating a new work, and you're going to have to make reference. If you're going to do a history of Canadian movies, you're going to have to be able to show those movies. If right now they're only under digital lock, you're going to have to find a way to do that. That, to me, is fundamentally different from saying, "If you don't like a digital lock, you can just take it off, and then you can go and do what you want with the film."

Do you, as an organization, see an ability for us to narrow the language so that we are making sure it's not actually interfering with the ability of artists to create works?

Mr. Reynolds Mastin: Our concern is twofold, and we recognize that this is a very difficult issue. The first part is what that language would look like and whether it would, for all intents and purposes, eviscerate the TPM provisions in place. We looked at a variety of different options in that regard and we always came to the same conclusion, which is that in attempting to find that balance, the moment you begin to water down that provision, there are all kinds of opportunity for those who are not going to break the locks, purely for fair dealing purposes, to use it for purposes that none of us here want. That's sort of the first issue.

The second is that we certainly recognize documentary filmmakers, because we represent them. Some of them, but not all of them, have a lot of concerns about this. It depends on who you speak to. One thing to bear in mind is there are ways of obtaining copyrighted material other than through the fair dealing provision, whether it's through the licensing of that material from the copyright holder or seeking permission from the copyright holder to use that material in your documentary. It's not a perfect solution, but it's not as if it's TPM protected, in which case there's an absolute bar against the documentary filmmaker using that material.

Mr. Charlie Angus: We won't continue going on with this, but I know, having spoken with John Greyson, that he's very concerned about having to ask the permission of some copyright holders who'll say, "No, you're not doing parody and satire of my work, so end of story." We put in a provision for parody and satire, and someone who doesn't want to be parodied says no. So I do believe we're going to have to come back to this.

I'm interested in the issue of the commercial infringement versus personal use, because I think we're all agreed we want to make sure that widespread commercial infringement is not destroying our business markets. The problem we again go back to is that your biggest threat is your fans. They're posting stuff because they love it. That's going to continue as our business models are changing. For example, Facebook—who would have thunk it?—is now the number one driver of eyeballs to online content.

How do we ensure that we're not destroying the very fan base that actually wants to support? This is their way of getting the works out there so you guys are remunerated, without, basically, suing the kids who love *Degrassi* and want to put it out there so they can see it.

Mr. John Barrack: As we said, Mr. Angus, I do not think Canada has a culture of suing kids for doing something like that.

I think the work of this committee, the work of this government, and this whole discussion brings about public debate on this very issue and a broader understanding, hopefully, in the minds of all consumers, particularly young consumers, of the activities they're undertaking and that they're not of neutral effect.

You say that these activities will continue. No doubt those attempts will continue until we change attitudes.

I think the work of this committee is both carrot and stick, if I can put it that way. It is about trying to create a bill that is fair to consumers, keeps consumers interested, and doesn't disincentivize them, in some respects, from wanting to consume Canadian content. By the same token, recognize that if we destroy those business models, we are not going to have any content for them to consume.

● (1245)

Mr. Charlie Angus: In terms of the provisions in this bill to go after commercial infringement, do you believe that it's sufficient? Again, going back to personal use, we have seen in the United States, which is very litigious, that it has very much poisoned the waters in terms of going after statutory damages. We have seen all kinds of people dragged in with their lawsuits.

Of the latest 100,000, most of those are people who just get a bill saying pay us $5,000 or we will sue you for $1 million. You don't have the power to stand up to Sony when they send that bill.

There is nervousness that we are going to see that. I agree with you that we are not a litigious culture. But how do we make sure that we have enough ammunition to shut down widespread commercial infringement without overstepping the bounds...? Again, the kids who actually love *Degrassi* and want to post it don't think they're doing anything wrong.

The Chair: We'll have to wrap up in just a second.

Mr. Reynolds Mastin: Madame Lavallée indicated that we had seven asks. I am realizing that there are eight, actually.

Mr. Charlie Angus: That's why I led you to it.

Mr. Reynolds Mastin: Thank you.

One thing that we think is very important in order to target commercial infringers is to ensure that the statutory damages provisions in place in the bill also apply to those who enable infringement.

We want to make sure that those secondary liability provisions also have statutory damages provisions supplied to them.

The Chair: Thank you very much.

We'll move on to Mr. Braid for seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you to our witnesses for being here this afternoon.

I'm certainly a big fan of the products your industry and your organization produce. Congratulations on your success.

How many countries around the world is *Degrassi* sold to?

Mr. John Barrack: I believe it's 127.

Mr. Peter Braid: One of the things Bill C-32 certainly endeavours to do is to bring Canada's copyright laws in line with the international context, in line with our international partners.

When you're selling Canadian products around the world, why is that important to your industry?

Mr. John Barrack: The revenue derived from those sales is an integral part of the financing of those shows. In other words, those international sales are often pre-sold ahead of production, and they create the revenue that allows production to take place.

Without those revenues, you're either going to have no Canadian production or a reduced quality of Canadian production. There will be a gap in the financing.

Mr. Peter Braid: Do you concur with the fact that Bill C-32 endeavours to bring us in line internationally, and is that important to your industry?

Mr. John Barrack: Yes. It is very important.

Mr. Peter Braid: Could you highlight, generally speaking, what aspects of the bill you think are integral to the bill and, as the committee process unfolds, need to be maintained?

Mr. John Barrack: If I might, and I'll let Reynolds comment with more specificity, I think that's why we set out the five priorities in our oral presentation. Those really are the key areas if we're going to be successful.

I think the bill goes a long way in addressing these. In some respects, it needs to be strengthened. Through careful study, we're going to find what we need to have to keep our businesses operating.

Mr. Reynolds Mastin: I entirely agree with that, John. I think the five priorities you see articulated here are the ones we're primarily concerned about and that we need to see reflected in whatever the final bill looks like.

Mr. Peter Braid: You mentioned TPMs. Are TPMs used across the board in your industry?

Mr. Reynolds Mastin: They are. But what's very interesting, and I think it's important to underscore this, is that for certain business models and forms of content distribution for membership, they're absolutely integral and essential. There are other circumstances when our members won't use TPMs, particularly when they're trying to promote a show and they want to use different vehicles of content distribution to do that.

What's critical for our membership is that we have the choice to use them or not. That's what Bill C-32 enables our members to do.

Mr. Peter Braid: When you were discussing TPMs you said that at a certain point consumers have the ability or the opportunity to sort of push back on them. Could you elaborate on that and provide an example of how and when that occurs?

● (1250)

Mr. Reynolds Mastin: Sure. I think it's fairly straightforward. The going in proposition for any independent producer or content creator is that we want to get our content into the hands of as many consumers as humanly possible. When we are looking at how we design TPMs and when and if we use them, the number one thing we are mindful of is this: how are we going to ensure that we get our content into the hands of as many consumers as possible?

Clearly, when we misjudge how best to do that.... There is such a gargantuan range of content available to consumers today, both here in Canada and around the world, that when our members don't use the right mechanism and/or the right TPM in this particular context, consumers simply won't buy their content. It's as simple as that. We have to compete in a global marketplace where there are a gazillion choices available to consumers.

Mr. John Barrack: I think the point that really needs to be emphasized is that it's about having that producer of content have the ability to make that choice, not have that choice expropriated from them.

Mr. Peter Braid: Okay.

Mr. John Barrack: There are times when you want to send your content far and wide to create interest, and then there are times when you want to monetize that content once that interest has been created.

Mr. Peter Braid: Okay. The bill gives producers the flexibility to decide if so and how.

Mr. John Barrack: Yes.

Mr. Peter Braid: Okay, great.

Is piracy a problem in your industry?

Mr. John Barrack: Yes.

Mr. Reynolds Mastin: It absolutely is, yes. As difficult to quantify as it may be, there's no question about that.

Mr. Peter Braid: Okay. That was going to be my next question. Have you attempted to quantify what piracy costs?

Mr. John Barrack: Again, it's very difficult to do. What we know is that it's largely anecdotal. You'll see copies of popular movies like *Bon Cop, Bad Cop* show up in these large flea markets where they're clearly pirated copies and they're selling.

How do we quantify that? Again, it's difficult, quite bluntly, for the Canadian industry to fund the kind of study that would be necessary to truly quantify that. I'm sorry that we haven't been able to do that. It's really very difficult to do in any meaningful way.

Mr. Reynolds Mastin: Also on that point, that's why it's so critically important that we get the statutory damages part of the bill right, for that very reason: how difficult it in fact is, in any given circumstance, to quantify the damages that have been sustained by a producer or any content creator in the case of an infringement.

Mr. Peter Braid: What aspects of the bill attempt to address this serious issue of piracy, in your mind, that are important?

Mr. Reynolds Mastin: The secondary liability provisions are critically important because they will go a long way in shutting down certain services that we know are currently being provided here in this country that shouldn't be. By virtue of this bill, we would be provided with the mechanism we need to shut them down. We would say that's actually one of the most critically important aspects of the bill.

Mr. Peter Braid: Thank you.

There has been a lot of discussion today about the issue of fair dealing in education. Do you support that notion?

Mr. Reynolds Mastin: To be very blunt, our preference would be that we not further expand the fair dealing provision in that way. However, we also recognize that this may be a matter, along with other aspects of the bill, that will be a matter of compromise. If the compromise is to retain that new exemption, then the one thing we would request is that clear definitional parameters be placed around the word “education”, because, as has been said many times before, it means different things to different people. We don't want to litigate this endlessly in the courts.

Mr. John Barrack: Again, it's all about unintended consequences. If everything can be called an educational experience, then the exemption is meaningless.

The Chair: All right. Thank you very much. Thank you to our witnesses.

The meeting is adjourned.

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